

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In re: :
WOOD, : Docket #20cv2489
 : 1:20-cv-02489-LTS-GWG
 :
Plaintiff, :
 :
- against - :
 :
MIKE BLOOMBERG 2020, INC., :
 : New York, New York
Defendant. : December 15, 2020
 :
----- : TELEPHONE CONFERENCE

PROCEEDINGS BEFORE
THE HONORABLE GABRIEL W. GORENSTEIN,
UNITED STATES MAGISTRATE JUDGE

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None

E X H I B I T S

<u>Exhibit Number</u>	<u>Description</u>	<u>ID</u>	<u>In</u>	<u>Voir Dire</u>
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THE CLERK: This is Wood v. Mike Bloomberg 2020, Inc., 20cv2489, and Sklair v. Mike Bloomberg 2020, Inc. and Michael Bloomberg, 20cv295. Counsel, please state your names and appearances for the record.

MS. DEIRDRE AARON: Good afternoon, Your Honor, this is Deirdre Aaron from Outten & Golden for the Wood plaintiffs.

MR. DAVID BERMAN: Good afternoon, Your Honor, this is David Berman from Emery Celli Brinckerhoff Abady Ward & Maazel for the Sklair plaintiffs.

MS. SALLY ABRAHAMSON: Yes, this is, good afternoon, this is Sally Abrahamson from Outten & Golden for the plaintiff in Wood, and with me is Hannah Cole-Chu also from Outten & Golden, and Michael Palitz from Shavitz Law Group.

MS. ELISE BLOOM: Good afternoon, Your Honor, this is Elise Bloom from Proskauer Rose and just on the line I'm joined by my colleagues Allison Martin, Rachel Philion, Mark Batten and Pinny Goldberg from Proskauer, and Nick Reiter and Sandy Schlesinger from the Venable Law Firm.

THE COURT: Welcome, everyone, it's been a while. Let's start by talking about where we are in discovery and what's down the road if I don't do

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2 anything or if I do do something, let's start with the
3 plaintiffs (indiscernible) situation?

4 MS. AARON: Thank you, Your Honor, this is
5 Deirdre Aaron on behalf of the Wood plaintiffs again.
6 In terms of discovery, the parties have exchanged
7 initial discovery and agreed to exchange discovery
8 regarding the sample of plaintiff, including the class
9 representative and the sample of named plaintiff and
10 opt-in plaintiffs and served responses back in October
11 and have begun producing documents and had an initial
12 meet and confer about some of the defendant's
13 objections to the plaintiffs' requests for production
14 and interrogatories. We aren't yet at a phase where
15 we have, we're trying to resolve some of the disputes
16 that we have at the moment and see if they can be
17 resolved without a Court intervention, but we are also
18 still in the process of receiving documents from
19 defendant and producing documents so -- as part of the
20 initial phase that the parties discussed. So at this
21 point we are still sort in the initial first phase of
22 discovery that we discussed with the Court at the July
23 hearing.

24 THE COURT: Well, I mean why don't you remind
25 me a little more and maybe you can turn it over to Ms.

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2 Bloom, but I don't have a good sense of what has been
3 permitted. So if you're relying on my remembering it,
4 don't do that. Tell me what you think is being
5 permitted and what you've sought and what's left to
6 do. We can hear from Ms. Bloom and we'll come back to
7 you, Ms. Aaron.

8 MS. AARON: Okay.

9 MS. BLOOM: This is Ms. Bloom. So in terms of
10 the discovery that was permitted and that's been
11 provided so far, I think it falls into two categories.
12 The first category were what we call hard copy
13 documents and just to be a little bit more specific
14 than that, I'm going to say it was a document that was
15 kept electronically but could be retrieved absent the
16 use, the identification of custodians or the use of
17 search terms, and it has some global application to
18 the plaintiffs. It would be included in the hard copy
19 documents. And just to give Your Honor a sense of the
20 types of documents that have been produced by the
21 defendant, things like organizational charts, resumes,
22 cover letters, job descriptions, employee handbooks,
23 documents that really went to the hiring process and
24 terms and conditions of the plaintiff's employment
25 with the campaign.

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2 We have produced information for six
3 representative plaintiffs and eight opt-ins. When we
4 were before Your Honor initially, we had contemplated
5 doing it for a larger group of the named plaintiffs,
6 but almost immediately after the conference, after we
7 served our discovery, plaintiffs' counsel reached out
8 to us and asked whether we would agree to do it for a
9 smaller sample than that and we reached a stipulation
10 with them. And so that's why there's a smaller sample
11 of individuals for whom information was produced. But
12 the hard copy documents that I just identified, again,
13 very broad categories, are ones that would have had
14 application beyond just the small sample of
15 individuals for whom we produced documents.

16 In addition to that, we produced the email
17 boxes for the same 14 individuals, the 6
18 representative plaintiffs and the 8 opt-in plaintiffs.
19 Again, we produced the email boxes without applying
20 search terms. I would say just so the Court sort of
21 has a point of reference, in total we produce over
22 80,000 pages of documents in terms of how that, for
23 document's sake it's a little bit more than 15,000
24 consisting of over 80,000 pages. And in terms of just
25 the email boxes for the 14 plaintiffs, they ranged in

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2 size from 500 to anywhere from 1,000 to 2,000 document
3 per email box.

4 With regard to what we've obtained from the
5 plaintiff, they provided to us some hard copy
6 documents and they have also provided some
7 electronically stored emails for their plaintiffs, but
8 the volume was much lower. For some of the
9 individuals it was as little as 1, I think the highest
10 was about 200, most of the 14 plaintiffs that we had
11 agreed to do discovery for had produced something less
12 than 100. And as opposing counsel indicated to the
13 Court, there's some, we've had some back and forth
14 just in terms of the, some of the objections and
15 information that the defendants believe that the
16 plaintiffs should be provided and have not, but we're trying
17 to work that out among ourselves and hoping that we'll be
18 able to resolve that without Court intervention.

19 With regard to the Sklair case, and for the Sklair
20 case there are six named plaintiffs and the plan was to
21 produce the same two buckets of information for the six
22 named plaintiffs. In terms of what the plaintiffs have
23 provided to us, we got for the first time some documents
24 last night and we're just looking through them, I think it
25 was about 170 documents. So I'm not, I don't have a

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2 clear picture of what was in them. We're going to be
3 producing, and as I said, the same categories of
4 information of one of the things that has slowed down
5 the production in that case is agreement on a
6 confidentiality order. Frankly, we assumed that we
7 would use the same one that Your Honor had signed off
8 on for the Wood case, the Sklair plaintiffs have
9 raised some concerns about that, and we are trying to
10 work that through with them. So that is where we are
11 in terms of the discovery that has been provided to
12 date and would the Court like me to address what the
13 discover is that we are seeking as stay as to in terms
14 of, you know, further information?

15 THE COURT: Eventually, but just so that I
16 understand, when you used the term two buckets, you
17 are referring to the hard copy documents of the email
18 boxes --

19 MS. BLOOM: That's correct, Your Honor,
20 exactly.

21 THE COURT: Okay. And did I order anything
22 else in July?

23 MS. BLOOM: You did not, Your Honor.

24 THE COURT: That was it, okay. So let me hear
25 from, does the Sklair attorney want to add anything

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2 before I go forward?

3 MR. BERMAN: Your Honor, this is David Berman,
4 I would just, I can clarify since defense counsel
5 understandably didn't know the scope of the documents
6 produced yesterday. We had agreed to run searches of
7 emails that our clients had, you know, they had
8 forwarded to themselves that were, you know, emails
9 that were in their Gmail account rather than their
10 Bloomberg account box. And I think that explains
11 largely why there are less, most of their emails that
12 are relevant are in their campaign emails that are
13 solely within defendant's possession, but to the
14 extent they had their own emails we made a production
15 of the majority of those yesterday with a few more to
16 come that we're sort of just working out some tech
17 issues on.

18 And then as far as, but otherwise I agree with
19 defendants, as far as what the current status is with
20 the note that all the documents defendants laid out
21 have only been produced in the Wood matter, though I
22 understand their representation that once we hammer
23 out all these issues with the protective order that
24 the same documents for our plaintiffs should be
25 produced in the Sklair matter.

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THE COURT: Okay.

MS. BLOOM: Your Honor, this is Ms. Bloom, I'm sorry, I forgot one category of the hard copy documents that were produced that I just want to make sure the Court is aware of. We also gave payroll records for the same group of plaintiffs.

THE COURT: Okay. Is there some way to characterize, Ms. Aaron, what discovery is coming down the road that you think we haven't hit the need that makes you think that we haven't hit the need to actually decide the stay question yet? In other words, there was, you know, suggestion in your papers everything is just fine, you don't have to deal with this right now, is this still the case, what is the timing on that? Anything you want to say to elaborate, go ahead.

MS. AARON: Thank you, Your Honor. While it's true in our paper that we stated that any stay would be premature at that point, that was prior to the parties beginning discovery. And certainly we are still trying to approach discovery and ESI from the perspective of trying to, you know, avoid any undue burden on the defendants which is why as part of the initial conference and the discussion with Your Honor

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2 at that time we agreed to do a phased approach of ESI
3 beginning with the production of the client email
4 inboxes. I think we're certainly getting to the point
5 where, you know, we're nine months into the case, five
6 months after the motion to dismiss has been fully
7 briefed, and, you know, getting to the point where we
8 are going to, you know, we can agree to just forego
9 ESI indefinitely. And on that point, I think one
10 example would be, referring back to the hard copy
11 documents that Ms. Bloom mentioned. And while we
12 certainly have not raised any disputes with the Court
13 yet and don't think it's appropriate to go into detail
14 yet, we, you know, we think there are still some
15 documents outstanding in terms of hard copy documents
16 from the defendants.

17 And our understanding is that those may be
18 forthcoming, but that there already has been
19 disagreement between the parties in terms of documents
20 fall into the categories of what the Court ordered the
21 parties to produce as part of the initial conference.
22 So, for example, the parties agree to hiring and
23 onboarding documents and general employment policies
24 and, you know, it appears even from our initial meet
25 and confer that there may be some issues about what

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2 the parties understand those documents to encompass.
3 And so even with respect to what may or may not be
4 covered by the stay, there are going to be questions
5 that may, you know, that we certainly will have to
6 meet and confer about may need to raise with the
7 Court.

8 And so in our view, you know, the idea of a
9 stay just sort of doesn't make sense because it's just
10 going to create additional inefficiency and back and
11 forth between the parties and potentially before the
12 Court.

13 THE COURT: Wait, wait, what's going to create
14 inefficiency, having a stay or, I'm sorry, I lost you,
15 I was with you until the last sentence.

16 MS. AARON: Certainly. So in terms of, in
17 terms of getting back to the question you asked about
18 whether it's premature, we think that we're, you know,
19 we're getting to the point where, you know, we can't
20 forego ESI discovery indefinitely while a motion to
21 dismiss is pending, that's the first point. And the
22 second point is that, you know, a motion, their stay
23 and the idea that we can sort of proceed with respect
24 to just certain categories of documents now, I think
25 is a bit of a fiction because the parties already

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2 appear to possibly have some disagreement about what
3 is covered by the category of documents defendants
4 have agreed to produce.

5 So if the Court were to order a stay we would
6 be dealing with questions about what is properly
7 covered by the stay and what is not and creating
8 additional layers of meet and confer and potential
9 disputes to be raised with the Court just about the
10 question of what is and is not subject to the stay.

11 THE COURT: Well, I mean what I'm thinking
12 about is the following which is I'm ready to, you
13 know, issue an order today, but someone is going to be
14 unhappy. And I wonder if it's not possible that the
15 status quo or maybe the status quo plus might be more
16 palatable than taking the all or nothing risk that
17 each side is taking on the stay question. I know I
18 kind of sprung that on you but it's not as if it's a
19 slam dunk for either side on the stay point and on the
20 merits. And there's some value in letting the parties
21 decide their own fates if they can come to an
22 agreement on it. And, you know, if it reaches a point
23 where, you know, you've exhausted all, I mean it
24 sounds like ESI is the big issue in terms of burden on
25 the defendant. Before I go any further, let me

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2 confirm that, Ms. Bloom, is that the big burden, ESI?

3 MS. BLOOM: Yes. Yes, Your Honor. And if our
4 papers are not clear with regard to a stay, what we're
5 asking the Court for is a stay as to ESI discovery
6 that requires identification of custodians and then
7 the application of search terms. So, yes, it is the
8 ESI which based on the discovery requests that were
9 served and what the plaintiffs have indicated that
10 they were looking for, will be, the burden will be 100
11 percent on the defendant. And I can give you some
12 quantification of that if that would at all be useful,
13 but --

14 THE COURT: Well we're not there yet, we're
15 not there yet, because what I'm trying to do, and it
16 may not work, is to explore, given that, you know,
17 both sides have a lot to lose here, whether some path
18 can be found short of, you know, the full ESI, that
19 can let us limp along for what might be a few months
20 until we get a decision on the motion to dismiss. I
21 mean is there any, it seems to me both sides should be
22 incentivized to figure this out. And I -- I am not
23 creative enough in terms of discovery to figure out
24 maybe there is some aspect of ESI, I know you're
25 (indiscernible) mailboxes of the plaintiffs and that's

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2 something, but is there some playing out of what's
3 going on here combined with something that I can't
4 think of that involves ESI that's not burdensome that
5 might be in the interest of both sides? And one
6 answer could be, I mean Ms. Bloom may have the
7 greatest stake here since she's the one who is paying
8 for the discovery. The answer may be, you know, I can
9 tell you right now, no, the answer may be, you know,
10 you have to decide this, Judge, because that's it. Or
11 the answer might be I want to think about it, in which
12 case we'll come back in a couple of weeks.

13 MS. BLOOM: Your Honor, this s Ms. -- I'm
14 sorry.

15 THE COURT: No, go ahead.

16 MS. BLOOM: No, I was going to say I think
17 giving the parties an opportunity to think about it a
18 little bit, at least from the defendant's perspective,
19 we would very much appreciate.

20 THE COURT: Okay. And I mean the plaintiff is
21 an equal player here, so?

22 MS. AARON: Yes, thank you, Your Honor --

23 THE COURT: If you, this is a very awkward way
24 for us to have a conference, and I have a mechanism by
25 which I can have my clerk take a break, and I can even

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2 put you and your people in a room privately if, for
3 some reason, you want to think about this and talk
4 before you answer my question. Or you may have your
5 own method, I don't know if you have a texting system
6 or something else that you want to talk to each other.
7 But I think we can put you into a room if you want us
8 to do that if you don't want to answer the question
9 right now.

10 MS. AARON: I am happy to answer it, at least
11 I have some additional points of information that may
12 allow defendants to assess whether they're in a
13 position to discuss it with us further. But just
14 getting back to the question of, you know, what we've
15 been talking about is hard copy documents, at the
16 prior conference we had discussed with the Court, you
17 know, the categories of documents that the parties
18 would agree to or that defendants would agree to
19 produce. And I think those, Ms. Bloom has discussed,
20 but just to recap those included hiring and onboarding
21 personnel files, payroll records and general
22 employment policies, and in addition to that they've
23 produced inboxes for the plaintiffs. But there were
24 several other categories of what plaintiffs believed
25 would be hard copy type documents that we outlined at

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2 the conference including staff call out lines, general
3 interview or talking points, training documents, job
4 duty documents going to the job duties of the field
5 organizers, guidance given to supervisors of field
6 organizers, termination communications and documents
7 regarding the (indiscernible) classification or the
8 job classification of the field officers, of field
9 organizers. And I believe we have an understanding
10 that some of those documents may be forthcoming but
11 some of them defendants may be withholding on the
12 basis of what the Court ordered at the initial case
13 management conference. And plaintiffs' position is,
14 first of all, to the extent they --

15 THE COURT: Before you get into it, Ms. Aaron,
16 before you get into it, this was kind of my point
17 which is if the defendants are interested in
18 bargaining, as it were, this is a chip that you could
19 use to say to them I'm willing to hold off on the ESI
20 if you produce those materials, and they can either
21 say no, I'll take my chances on this thing and come
22 back to me at any time. Or they could say, okay, yeah,
23 fine, I'll give it to you as long as we put this off
24 now for two months or whatever it is. I don't want to
25 do it, I don't want you to bargain here in front of

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2 me, but it seems to me that's exactly what the two of
3 you might discuss if you want to avoid kind of what
4 may be the all or nothing for my decision.

5 So my question is, Ms. Aaron, do you want the
6 chance to talk about it and see if you can, you know,
7 decided on something that could stretch this out for,
8 I mean I think it's going to have to be at least, I
9 don't imagine Judge Swain is going to have anything
10 out, you know, tomorrow or the next day or perhaps
11 even in the next month, just looking at other cases
12 and where she is in her schedule. I mean obviously I
13 don't know. But we have to assume the possibility
14 that it could be several months.

15 So, you know, taking us out for a two weeks I
16 don't think will solve it. Taking us out for a few
17 months might solve it. So if you think we could get
18 to that point, then it would be worth seeing if you
19 could work out something with the other side. And in
20 order to take us down a few months, who knows, you
21 might bargain for some kind of ESI that isn't
22 burdensome, I don't know if it exists, but I'm
23 assuming the parties are more creative about this than
24 I could ever be. But it would have to take us out for
25 a few months I would think for it to be of any value,

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2 otherwise we might as well just get this over with and
3 I'll turn the switch on or off.

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MS. BLOOM: It's acceptable for the defendant
5 to do that.

6

THE COURT: Okay. I mean it's not a big ask,
7 as it were, because you can come back to me
8 essentially at any time and say either we've worked
9 out a deal and we don't need you right now, or we
10 couldn't reach anything and you're going to have to
11 decide this thing. In which case I'll do it on the
12 spot, I'll do it, you know, in an oral argument. So
13 Ms. Aaron, so the real question is if you want I'll
14 decide this thing right now and if you don't, I will
15 be happy to essentially put the motion for a stay in
16 abeyance until I hear from you that I have to decide
17 it.

18

MS. AARON: Plaintiffs are agreeable to having
19 a discussion with defendant's counsel and see if we
20 can reach some sort of interim agreement. I don't know
21 whether defendant is in a position to discuss that
22 today as you proposed in some sort of a breakout, or
23 want to schedule something separately.

24

THE COURT: No, no, my idea of a breakout was
25 not for the two of you to discuss it, it was for you

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2 to be able to respond to my proposal in case you
3 wanted to discuss it with anyone else on your team,
4 that's all. So if you don't need that, you already
5 answered the question which is you'd be willing to, it
6 sounds like you'd be willing to take a shot at it. So
7 what I would propose is, is I just need a report in
8 the next few weeks that says either, you know, either
9 we want you to decide the issue, the stay now, we
10 couldn't reach any agreement, or we've reached an
11 agreement and we don't need you to decide the stay
12 until you hear from us again. So I would propose that
13 that letter come, you know, sometime beginning to mid-
14 January.

15 MS. BLOOM: Understood, Your Honor, that's
16 acceptable to defendants, I would ask just after January
17 7.

18 THE COURT: Okay. Ms. Aaron, any thoughts about
19 when this letter should come? I'm thinking the 15th.

20 MS. AARON: That probably is, that's fine with us,
21 as well, given the holidays probably realistic --

22 THE COURT: The two of you can at any time agree
23 to do it later, that's not a magic date for me. At some
24 point for bureaucratic reasons I may deem the motion to stay
25 withdrawn with leave to be instated any time just because

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it's not really reflective of the pending motion if you two are able to hobble along without my making a decision. But that will have no practical effect on anything.

So I'll expect a letter on the 15th or something telling me that you're extending it or, you know, one of those two. And the letter will either say we're fine for some indefinite period and we'll get back to you, or we would like you to decide this motion now.

MS. BLOOM: Thank you, Your Honor, from the defendants.

THE COURT: Okay, I don't think I have anything -- Mr. Berman, I realize I left you out of this whole thing.

MR. BERMAN: That's all right, Your Honor, we agree with everything that's been agreed to and will join the conversation with the Wood plaintiffs and defendants.

THE COURT: Okay. All right, I think I, I don't have any other agenda for today, Ms. Aaron, is there anything else we should do?

MS. AARON: Nothing else from the plaintiff, the Wood plaintiff, thank you, Your Honor.

THE COURT: Mr. Berman, anything?

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MR. BERMAN: Nothing else from us, Your Honor.

THE COURT: Ms. Bloom, anything?

MS. BLOOM: No, Your Honor, thank you very
much.

THE COURT: Okay, thank you, good-bye.

(Whereupon the matter is adjourned.)

C E R T I F I C A T E

I, Carole Ludwig, certify that the foregoing transcript of proceedings in the United States District Court, Southern District of New York, Wood versus Mike Bloomberg 2020, Inc., Docket #20cv2489, was prepared using PC-based transcription software and is a true and accurate record of the proceedings.

Signature Carole Ludwig

Carole Ludwig

Date: December 18, 2020